

## INITIAL STATEMENT OF REASONS

### **2842. Approved Borrower Disclosure Statement For Nontraditional Mortgage Products.**

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER  
CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO  
ADDRESS

Section 2840 of the Regulations was originally adopted and subsequently amended to provide forms that would meet the requirements of Sections 10236.4, 10240, 10240.2, and 10241 to assist real estate brokers in presenting the required information in a format that was easy to follow and understand by the prospective borrower. Conditions in the homebuying market have changed rapidly. Conventional loan rates and home values have resulted in a reduction in the number of persons qualified to purchase a home. This, in turn, has spawned a variety of "nontraditional mortgage products" offered to borrowers with terms and conditions which have allowed more potential borrowers to "qualify" for loans but without giving the borrowers sufficient information about the repayment structure to make an informed decision regarding their ability to meet the payment obligation as the loan matures. On January 31, 2007, the California Senate Banking Committee held a hearing on nontraditional mortgage products and the application to State mortgage regulators of the Interagency Guidance on Nontraditional Mortgage Products Risks (Guidance). The Federal Guidance was jointly promulgated by the Office of the Comptroller of the Currency (Treasury Department), Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision (Treasury Department), and the National Credit Union Administration, to provide instruction to federally regulated entities on how to address the inherent risks to industry and consumers associated with the origination and funding of nontraditional mortgage products. The Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators promulgated a similar Guidance requesting that State regulators of mortgage lenders and brokers adopt the Guidance to maximize consumer protections when using high risk loan products. Primarily because of the increased number of loan defaults related to nontraditional mortgage products and the public attention attributable to them, the Senate Banking Committee at the January 31 hearing asked the Department which areas of the Guidance were applicable to the Department's licensed mortgage brokers and whether the Department had the enforcement authority to enforce the applicable portions of the Guidance. The Committee was advised that the Consumer

Protection portion of the Guidance is applicable to mortgage brokers and existing law would allow for enforcement; however, clarifying regulations would be needed to instruct licensees how to comply. The changes proposed in Regulation Section 2842 are designed to accomplish that goal by implementing, interpreting and/or making specific the applicable laws and regulations cited hereinabove.

#### SPECIFIC PURPOSE OF THE REGULATION

The purpose of this proposed change is to adopt a regulation to assist real estate brokers involved in "nontraditional mortgage products" to meet the disclosure requirements to borrowers pursuant to Sections 10240 and 10241 of the Code.

#### NECESSITY

The amendment is necessary to assist real estate brokers in meeting the disclosure requirements to borrowers pursuant to Sections 10240 and 10241 of the Code.

#### TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Commissioner did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

#### ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The Commissioner finds that no alternatives he has considered would be more effective in carrying out the purpose of the proposed regulation change or would be as effective and less burdensome to affected private persons than the proposed regulation change.

#### ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON BUSINESSES

The Commissioner has determined that there are inconsequential additional costs associated with this action. Therefore, the proposed regulation change would not have an adverse economic impact on licensees and no alternatives to these changes were identified that would lessen the impact upon businesses.

#### **2848. Advertising Criteria.**

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS

Sections 10232.1 and 10235 of the Business and Professions Code provide the statutory basis for the Department's obligation to assure that the advertising of real estate brokers who solicit borrowers or lenders for or negotiate loans or collect payments or perform services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, are not doing so in a false, misleading or deceptive manner. Regulation Section 2848, Title 10, California Code of Regulations was promulgated in 1965 to implement, interpret, and make specific the provisions of Sections 10232.1 and 10235. As a result of the changing conditions of the real estate market, the need to protect consumers and the concerns as raised at the January 31, 2007 Senate hearings, discussed immediately above, the Department is proposing to amend Section 2848 of the regulations to require additional disclosures in advertising by licensees regarding various "higher risk" loan products to assure that the advertising is not misleading or deceptive. The changes proposed in Regulation Section 2848 are intended to implement, interpret or make specific Sections 10232.1 and 10235 of the Business and Professions Code.

#### SPECIFIC PURPOSE OF THE REGULATION

The purpose of this proposed change is to amend the regulation to require licensees to provide detailed information in advertising distributed to borrowers solicited for "high risk" loan products to assure such advertising is not misleading or deceptive.

#### NECESSITY

The amendment is necessary to assist real estate brokers in meeting the requirements of Sections 10232.1 and 10235 of the Code to assure that advertising is not misleading or deceptive.

#### TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Commissioner did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

#### ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The Commissioner finds that no alternatives he has considered would be more effective in carrying out the purpose of the proposed regulation change or would be as effective and less burdensome to affected private persons than the proposed regulation change.

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The Commissioner has determined that there are no additional costs associated with this action. Therefore, the proposed regulation change would not have an adverse economic impact on licensees and no alternatives to these changes were identified that would lessen the impact upon businesses.